



Paper No. 22

JOHN H. THOMAS, P.C.
1561 EAST MAIN STREET
RICHMOND, VA 23219

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SEP 03 2002

In re Application of
Slyne
Application No. 09/094,719
Filed: June 15, 1998
Attorney Docket No. AIRD 3

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed on July 19, 2002, to revive the above-identified application.

The petition is **DISMISSED**.

A non-final Office action was mailed on August 15, 2001 ("8/15/01 Notice"), giving Applicant a 3-month shortened statutory reply period. No response was filed and no extension of time under 37 CFR 1.136(a) was obtained. The application became abandoned on November 16, 2001. A Notice of Abandonment was mailed on April 4, 2002.

Under 37 CFR 1.137(b), a grantable petition to revive an abandoned application must be accompanied by: (1) the required reply, unless previously filed;¹ (2) the petition fee as set forth in 37 CFR 1.17(m);² (3) **a statement that the entire delay in filing the required reply from its due date until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional**; and (4) a terminal disclaimer for a utility application filed before June 8, 1995, as required by 37 CFR 1.137(d).³ Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional, the Commissioner may require additional information.⁴ As delineated below, the instant petition does not meet the requirement of item (3) above, in that, it lacks sufficient showing for supporting such a statement contained therein.

The instant petition along with an "Amendment & Response" in reply to the 8/15/01 Notice was filed 8 months after the application had become abandoned, and more than 3 months after the mailing of the Notice of Abandonment. This petition encloses a "Statement that the Entire Delay Was Unintentional under 37 CFR 1.137(b)" ("Statement") by attorney John H. Thomas, who was appointed by Applicant on March 27, 2002 to prosecute this application. The Statement asserts that "[t]he entire delay in filing the Reply and the Petition for Revival has been unintentional." However, attorney Thomas evidently does not have first-hand knowledge of the circumstances

¹ An "Amendment & Response" is enclosed with the petition.

² The \$640 fee (small entity) is enclosed with the petition.

³ Not applicable to this application.

⁴ See MPEP 711.03(c)(III)(C) and (D) (Aug. 2001).

under which the application became abandoned in November 2001, or why the instant petition to revive was not filed until 8 months later. The Statement also sets forth in essence that:

- Applicant, after receiving the 8/15/01 Notice which clearly contains a November 15, 2001 deadline for response, waited until November 2001 to contact a new attorney for continued prosecution of this application;⁵
- No immediate urgency was noted in late February or early March 2002 when Applicant first learned of the abandonment of the application and the possibility of its revival;⁶
- Applicant did not focus on the instant application until June 2002, after having devoted his time and effort to, *inter alia*, "patent issues relating to a different application on a different technology."⁷

In view of the above, the Office concludes that the delay in responding to the 8/15/01 Notice, thereby causing the application to become abandoned, and the subsequent further delay in filing the instant petition were the results of Applicant's deliberate decision. Such delays are not "unintentional" within the meaning of 37 CFR 1.137(b)(3).⁸ The instant petition is thus dismissed.

A renewed petition under 37 CFR 1.137(b) (no fee) must be filed within **TWO (2) MONTHS** from the mailing date of this decision unless proper extension(s) of time under 37 CFR 1.136(a) is (are) obtained. To be grantable, the renewed petition **must** properly show that the entire delay in filing the required reply from its due date until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.⁹

The renewed petition should be addressed as follows:

by mail/by hand : Commissioner for Patents, USPTO
 Attn: Office of Petitions
 2201 South Clark Place
 Crystal Plaza Four, Suite 3C23
 Arlington, VA 22202

⁵ Statement, page 1, paragraphs 3 & 4.

⁶ Statement, page 2, paragraph 5.

⁷ Statement, page 2, paragraphs 6 & 7. If counsel had been appointed in March 2002, it is not clear why Applicant was not advised to promptly file a petition to revive.

⁸ A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional.

⁹ If Applicant intentionally delays the filing of such a petition, a statement that the entire delay was unintentional may have an adverse effect when attempting to enforce any patent resulting from the application. MPEP 711.03(c)(III)(C) (Aug. 2001).

by facsimile: (703) 308-6916
Attn: Office of Petitions

Finally, the "Revocation of Power of Attorney and Appointment of New Attorney" filed with the instant petition and the new correspondence address have been entered and made of record.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy